

Editor's note: Reconsideration and request for hearing denied by order dated May 12, 1972; decision affirmed by letter from Director dated June 14, 1972 -- See 4 IBLA 326A & B below.

J. D. ARCHER

IBLA 70-369

Decided February 14, 1972

Appeal from decision by Idaho state office, Bureau of Land Management rejecting application for phosphate prospecting permit.

Affirmed, as modified.

Phosphate Leases and Permits: Permits

Where a phosphate prospecting permit application has been rejected as to part of the lands applied for upon the basis of reports by the Geological Survey, and the Survey determines upon further consideration that prospecting is necessary to determine the workability of the phosphate deposits in part of the rejected lands, the application will be allowed for those lands.

Phosphate Leases and Permits: Permits -- Rules of Practice: Hearings

A hearing will not be granted for the purpose of determining whether or not certain lands are known to contain workable deposits of phosphate where there does not appear to be a substantial question of fact but only a question of the sufficiency of the established facts to serve as the basis for a determination that the lands do contain workable deposits.

APPEARANCES: J. D. Archer, pro se.

OPINION BY MR. HENRIQUES

J. D. Archer has appealed to the Director, Bureau of Land Management, 1/ from a decision dated May 27, 1969, in which the Bureau's Idaho land office rejected his application I 2544 for a phosphate prospecting permit on lots 3, 4, W 1/2 SE 1/4 sec. 10, and N 1/2 NE 1/4 sec. 15, T. 9 S., R. 43 E., B.M., Idaho, because the Geological Survey

1/ The Secretary of the Interior, in the exercise of his supervisory authority, transferred jurisdiction over all appeals pending before the Director, Bureau of Land Management, to the Board of Land Appeals, effective July 1, 1970. Circular 2273, 35 F.R. 10009, 10012.

had reported the lands were classified for phosphate leasing only. A previous determination on these lands by the Survey in response to an earlier application filed by appellant was upheld in a decision by the Assistant Secretary, J. D. Archer, A-30668 (October 2, 1968).

Time for submitting a statement of reasons for the appeal was extended repeatedly to allow Archer to consult with the Geological Survey relative to its classification of the phosphate deposits on the lands in question.

The Geological Survey made a supplemental report on April 23, 1971, signed by Dr. Russell G. Wayland, Chief, Conservation Division, recommending that the prospecting permit be allowed for lot 4 and SW 1/4 SE 1/4 section 10, T. 9 S., R. 43 E. Archer then submitted, as his statement of reasons, a letter alleging that he had been assured by representatives of the Geological Survey that the phosphate classification would be changed to allow issuance of a prospecting permit on the N 1/2 NE 1/4 section 15, in addition to the lands in section 10. He did not make any showing to refute the Geological Survey classification that prospecting to determine the existence and workability of phosphate is necessary only in lot 4 and SW 1/4 SE 1/4 section 10, but he did request a hearing "so that the facts surrounding the changes made in the decision by Russell G. Wayland, Chief, Conservation Division, Geological Survey can be determined."

Dr. Russell G. Wayland, Chief, Conservation Division, Geological Survey, in a memorandum dated October 20, 1971, stated that authorization to make a determination of the existence and workability of minerals under the Mineral Leasing Act of February 25, 1920, 30 U.S.C. § 181 et seq. (1970), is vested in the Director, Geological Survey. Under delegation given to him as Chief, Conservation Division, he actually makes the final determinations under the Mineral Leasing Act for the Director, Geological Survey. So in this case, he made the final determination that prospecting to determine the existence and workability of phosphate was necessary only on lot 4 and SW 1/4 SE 1/4 section 10, relying on his qualifications as a mining engineer and as a geologist to interpret the record. Dr. Wayland stated that any purported determination of the character of phosphate deposits by any employee of the Geological Survey excepting one acting as Chief, Conservation Division, or as Director, Geological Survey, is not binding upon the Government. This is true.

Under the Mineral Leasing Act, the leasing of phosphate lands is discretionary with the Secretary of the Interior. The Act, as amended, 30 U.S.C. §§ 211-214 (1970), authorizes issuance of prospecting permits

only where prospecting or exploratory work is necessary to determine the existence or workability of phosphate deposits in any unclaimed or undeveloped area. It is for the Secretary, or his delegate, to determine whether, from information which he has at the time an application for prospecting permit is considered, prospecting or exploratory work is necessary to determine the existence of phosphate deposits. In making such determination, reliance is placed on the conclusions and recommendations of the Director, Geological Survey, reached from field examinations and other collected information. In this case Dr. Wayland was the authorized delegate who made the determination for the Geological Survey. In the absence of a clear showing that a determination was improperly made, the Secretary will not disturb a mineral classification or determination made by the Geological Survey. Cf. Lillie May Yates, A-26271 (February 8, 1952).

An application for a phosphate prospecting permit is properly rejected in part when information is available as to those lands from which the existence and workability of the phosphate deposits can be determined; it is not necessary that the information specifically describe the phosphate deposits in the lands applied for, where detailed information is available regarding the existence of workable deposits in adjacent lands and geologic and other surrounding external conditions from which the workability of the deposits in the lands applied for can be reasonably inferred. American Nuclear Corporation, A-30808 (March 5, 1968). However, where a phosphate prospecting permit application has been rejected as to part of the lands applied for upon the basis of reports of the Geological Survey, and the Survey determines upon further consideration that prospecting is necessary to determine the workability of the phosphate deposits in part of the rejected lands, the application will be allowed for those lands now available. William J. Colman, A-30516 (Supp.) (September 16, 1968); American Nuclear Corporation, supra.

In his request for a hearing, Archer did not indicate that he would offer evidence to refute the determination by the Geological Survey, but rather he indicated he would seek to discover why Dr. Wayland had overruled in part the suggestions of his subordinate employees as to the classification of the subject lands. A review of the record does not show that a substantial issue of fact has been developed. To the contrary, the appellant appears to be challenging the standard applied by the Chief, Conservation Division, in determining that the lands in question are subject to the leasing, rather than the prospecting provisions of the Mineral Leasing Act. A hearing will not be granted for the purpose of determining whether or not certain lands are known to contain workable deposits of phosphate

where there does not appear to be a substantial question of fact but only a question of the sufficiency of the established facts to serve as the basis for determination that the lands do contain workable deposits. William J. Colman, A-30516 (November 4, 1966). The request for a hearing is denied.

In view of the present recommendations of the Geological Survey, it is determined that the land office decision denying the appellant any prospecting permit should be modified to allow the issuance of a permit for lot 4, SW 1/4 SE 1/4 section 10, T. 9 S., R. 43 E., B.M., if otherwise available.

Any permit issued will contain the following minimum requirements: (1) At least one adequate core test through the Rex Chert and Meade Peak members of the Phosphoria Formation, satisfactory to the regional mining supervisor, will be required for an extension beyond the two-year primary period of the permit. (2) To qualify for a preference right lease for all or part of the land, the permittee must drill at least two adequate test holes or perform comparable prospecting in accordance with the approved plan for exploration and make a discovery of a valuable, workable, phosphate deposit satisfactory to the regional mining supervisor. (3) A proposed prospecting plan must be approved in advance by the regional mining supervisor.

This modification is without prejudice to the right of the appellant to file a competitive lease application for the remaining lands described in his application in one or more mining units so long as the lands are in reasonably compact form.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed as modified.

Douglas E. Henriques
Member

We concur:

Anne Poindexter Lewis, Member

Joan B. Thompson, Member

June 14, 1972

Mr. J. D. Archer
P.O. Box 8031
Foothill Station
Salt Lake City, Utah 84108

Dear Mr. Archer:

The Secretary of the Interior has directed that I review your June 5, 1972, request for the exercise of supervisory authority in the matter of J. D. Archer, IBLA 70-369.

This matter was the subject of an appeal from a decision of the Idaho State Office, Bureau of Land Management, to the Board of Land Appeals. (See 4 IBLA 323, February 14, 1972). Subsequently, upon receipt of your request for reconsideration of March 24, 1972, the Acting Secretary of the Interior, Dr. William T. Pecora, requested the Board to reconsider its decision. (See IBLA order dated May 12, 1972, dismissing petition for reconsideration.)

The sole basis for your latest request for reconsideration is that the Department's original decision, made by Dr. Russell G. Wayland, Chief, Conservation Division, Geological Survey, was "arbitrary and capricious ... [and] contrary to the facts and the evidence." These allegations were also raised in your original appeal and petition for reconsideration. However, at no time have you proffered any facts or evidence to refute Dr. Wayland's decision. Your lone contention is that Dr. Wayland acted in an arbitrary and capricious manner because he modified the recommendations of competent subordinates. This position is without merit. As Chief of the Conservation Division, Dr. Wayland is delegated the responsibility and authority to make determinations of existence and workability of minerals under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 et seq. To permit Dr. Wayland to merely rubber stamp recommendations of subordinate employees would

4 IBLA 326A

be tantamount to authorizing misfeasance of his duties and responsibilities. Therefore, your petition must be denied.

Pursuant to the supervisory authority delegated to the Director, Office of Hearings and Appeals (211 DM 13.1; 35 F.R. 12081; 43 CFR 4.5), the decision of the Board of Land Appeals, J. D. Archer, 4 IBLA 323, is affirmed and no further appeals will be entertained.

Sincerely,

James

M. Day

Director

cc: SCCO
Dr. Wayland
Jack Rigg - AS/MR
IBLA
Director's File

4 IBLA 326B

